



## **Supplemental Educational Services *Draft Non-Regulatory Guidance***



*August 6, 2002*

**DRAFT GUIDANCE**

Note: This guidance is consistent with the current proposed rules that the Department of Education published on August 6, 2002. We will be accepting comments on those proposed rules (please see the Federal Register notice dated August 6, 2002). If you have additional questions about supplemental educational services that are not answered in this guidance, please submit your questions to [ss@ed.gov](mailto:ss@ed.gov) or Jackie Jackson, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB-6, Washington, DC 20202-6132.

# **TITLE I, SECTION 1116(e): DRAFT GUIDANCE SUPPLEMENTAL EDUCATIONAL SERVICES**

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## **Title I, Section 1116(e): Guidance Supplemental Educational Services**

### **I. INTRODUCTION**

#### **A. GENERAL INFORMATION**

##### **A-1. What are supplemental educational services?**

Supplemental educational services are additional academic instruction designed to increase the academic achievement of students in low-performing schools. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C)].

##### **A-2. What is the purpose of supplemental educational services?**

When students are attending schools that have not made adequate yearly progress in increasing student academic achievement for three consecutive years, parents will be provided opportunities to ensure that their children achieve at high levels. Supplemental educational services are a component of the *No Child Left Behind Act* (NCLBA) that will provide extra academic assistance for eligible children. Students from low-income families who are attending Title I schools that are in their second year of school improvement (i.e., have not made adequate yearly progress for three or more years), in corrective action, or in restructuring status are eligible to receive these services.

The State is required to identify organizations, both public and private, that qualify to provide these services. Parents of eligible students are then notified, by the local educational agency, that supplemental educational services will be made available, and parents can select any approved provider that they feel will best meet their child's needs in the area served by the LEA or within a reasonable distance of that area. The local educational agency (usually a school district) will sign an agreement with providers selected by parents, who will then provide services to the child and report on the child's progress to the parents.

The goal is to ensure that these students increase their academic achievement, particularly in reading/language arts and mathematics. This component of Title I offers parents choices in addressing their child's educational needs, and offers students extra help.

**A-3. What educational options are available to students and parents?**

Under the *No Child Left Behind Act*, students attending schools that have not made adequate yearly progress in improving student academic achievement for two or more years will be given the educational options of attending another public school or receiving supplemental educational services, depending on the status of the school and specific eligibility requirements. The choice to attend another public school is available to all students enrolled in schools that have not made adequate yearly progress for two or more years. The provision of supplemental educational services is available to students from low-income families who are enrolled in schools that have not made adequate yearly progress for three or more years. These options continue until the school has made adequate yearly progress for two consecutive years. When both options are available, parents will be able to choose which option is best for their child. In very limited circumstances where choice is not possible, LEAs are encouraged to consider offering supplemental education services during the first year of school improvement.

**A-4. When must districts make supplemental educational services available?**

In general, LEAs must make supplemental educational services available for eligible students attending schools that do not make AYP after one year of school improvement (three years of not making AYP). For example, if a school does not make adequate yearly progress in the 2002-03, 2003-04, and 2004-05 school years, the LEA must make available supplemental educational services to eligible students in the school at the beginning of the 2005-06 school year.

For the 2002-03 school year, transition language in NCLBA requires LEAs to make services available at the beginning of the next school year to eligible students in certain schools. Schools identified as in need of improvement for two or more years or that were subject to corrective action prior to NCLBA enactment (i.e., before January 8, 2002) must offer supplemental educational services. (See the following table.) However, if a school in improvement or corrective action before January 8, 2002 makes adequate yearly progress for a second consecutive year based on its 2002 assessment results, the LEA is not required to provide supplemental educational services to students in that school. Additionally, to assist with the transition to NCLBA, the Department is allowing States the option of identifying schools for improvement if they



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do not make adequate yearly progress for the second year based on assessment results from the 2001-02 school year (see the table).

Schools must continue offering supplemental educational services to their eligible students until the schools are no longer identified for school improvement, corrective action, or restructuring. Schools are no longer identified for improvement, corrective action, or restructuring if they have made adequate yearly progress for two consecutive years.

### *No Child Left Behind Act*

#### **Timeline for School Choice and Supplemental Services, Fall 2002**

| School year | IMPROVEMENT STATUS                              |  |   |  |  |
|-------------|---|--|---|--|--|
|             | Identified for school improvement <sup>1</sup>  | Did make AYP   | Did not make AYP for first year                                     | Did not make AYP for second year   | Did not make AYP for three years   |
| 1999-2000   | Did make AYP                                    | Did not make AYP (1 <sup>st</sup> year)  | Did not make AYP (2 <sup>nd</sup> year)                             | Did not make AYP (3 <sup>rd</sup> year)  | Did not make AYP (4 <sup>th</sup> year)                                      |
| 2000-2001   | Did make AYP                                    | Did not make AYP (1 <sup>st</sup> year)  | Did not make AYP (2 <sup>nd</sup> year)                             | Did not make AYP (3 <sup>rd</sup> year)  | Did not make AYP (4 <sup>th</sup> year)                                      |
| 2001-2002   | School makes AYP for second year.               | Schools that do not make AYP for the second year based on 01-02 data <b>may</b> be identified for improvement in 2002-2003       | First year of “school improvement” prior to 1/8/02                  | Second year of “school improvement” prior to 1/8/02  | “Corrective action” prior to 1/8/02  |
| 2002-2003   | School is no longer identified for improvement. | <b>If identified for 02-03:</b><br>Must provide school choice<br><hr/> <b>If not identified for 02-03:</b><br>No action required | First year of school improvement:<br><br>Must provide school choice | Second year of school improvement:<br><br>Must provide school choice & supplemental services | Corrective action:<br><br>Must provide school choice & supplemental services |

<sup>1</sup>This scenario would apply to schools identified for improvement or corrective action.

*NOTE: The timeline described in this chart is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.*

#### **A-5. Who is eligible to receive supplemental educational services?**

Eligible students are all students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is thus determined by whether a student is from a low-income family and the improvement status of the school the student attends. Eligibility is not dependent on whether the student is a member of a subgroup that caused the school to

not make adequate yearly progress or whether the student is in a grade that takes the statewide assessments as required by Section 1111 of NCLBA.

If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, the LEA must give priority to providing services to the lowest-achieving eligible students. In this situation, the LEA should use objective criteria to determine the lowest-achieving students. For example, the LEA may focus services on the lowest-achieving eligible students in the subject area that caused the school to be identified. The services should be tailored to meet the instructional needs of eligible students to increase their academic achievement and help them attain proficiency in meeting the State's achievement standards.

## **II. STATE (SEA) RESPONSIBILITIES**

### **B. OVERVIEW OF STATE RESPONSIBILITIES**

#### **B-1. What is the responsibility of the State in providing supplemental educational services?**

The State educational agency (SEA) has a number of responsibilities in ensuring that eligible students receive additional academic assistance. The SEA must identify providers, maintain a list of providers, and monitor services. Specifically, the SEA must:

1. Consult with parents, teachers, LEAs, and interested members of the public to identify a wide array of supplemental educational service providers so that parents have a wide variety of choices [Section 1116(e)(4)(A)].
2. Provide and disseminate broadly an annual notice to potential providers the process for obtaining approval to be a provider of supplemental educational services (see Section C for additional information) [Section 1116(e)(4)(E)].
3. Develop and apply objective criteria for approving potential providers (see Section C for additional information) [Section 1116(e)(4)(B)].
4. Maintain an updated list of approved providers (see Section D additional information) [Section 1116(e)(4)(C)].
5. Develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of services

offered by approved supplemental educational services providers  
(see Section E for additional information) *[Section 1116(e)(4)(D)]*.

## **C. IDENTIFICATION AND APPROVAL OF PROVIDERS**

### **C-1. How do States identify and approve supplemental educational services providers?**

The SEA must develop and apply objective criteria for approving supplemental educational service providers. The criteria for approving providers as well as the list of approved providers must be published.

The criteria developed by the SEA for the approval of supplemental service providers must include:

1. A demonstrated record of effectiveness in improving student academic achievement;
2. Documentation that the instructional strategies used by the provider are high quality, based upon research, and designed to increase student academic achievement (see C-11 for additional information);
3. Assurance that services are consistent with the instructional program of the LEA and with State academic content standards (see C-12 for additional information);
4. Evidence that the provider is financially sound (see C-13 for additional information) *[Section 1116(e)(12)(B)]*; and
5. Assurance by the provider that it will provide supplemental educational services consistent with applicable Federal, State, and local health, safety, and civil rights laws (see C-2 and C-3 for additional information).

States have flexibility in developing their approval process, but must provide an opportunity at least annually for new providers to apply for inclusion on the State list and ensure that interested providers have knowledge of the process. The SEA must give school districts a list of available providers in their general geographic locations *[Section 1116(e)(4)]*. States may establish a reasonable period of time during which additional providers may apply, be evaluated for approval, and be added to the list.

States may not, as a condition of approval, require a provider to hire only staff who meet the requirements of Section 1119 of the Elementary and Secondary Education Act of 1965 (ESEA). *[NOTE: These provisions are included as draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

These criteria should be developed in consultation with LEAs, parents, teachers, and other interested members of the public to promote

maximum participation by providers and to ensure, to the extent practicable, that parents have as many choices as possible [Section 1116(e)(4)(A)].

**C-2. What Federal civil rights requirements apply?**

A supplemental educational services provider is not, merely by being a provider, a “recipient of Federal financial assistance.” Under section 1116(e)(5)(C) of Title I, however, a provider must meet all applicable Federal, State, and local health, safety, and civil rights laws. For example, under applicable Federal civil rights laws, a provider may not discriminate on the basis of race, national origin, sex, or disability in accepting students, and providing students with supplemental educational services. These provisions apply to supplemental educational services supported under Title I, not to the overall entity that provides the services.

With respect to students with disabilities under the Individuals with Disabilities Education Act (IDEA) and students covered under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), a provider must provide services that are consistent with the student’s individualized education program under Section 614 of the IDEA or the student’s individualized services under Section 504. In general, a provider may not, on the basis of disability, exclude a qualified student with disabilities or a student covered under Section 504 if the student can, with minor adjustments, be provided supplemental educational services designed to meet the individual educational needs of the student. *[Note: The policy in the last sentence is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

**C-3. Must the same criteria be used to approve all entities that wish to become providers?**

Yes. All providers must be evaluated in the same way and meet the same criteria for inclusion on the State list.

**C-4. What entities can be considered as supplemental educational service providers?**

A provider of supplemental educational services may be a non-profit entity, a for-profit entity, or a local educational agency, and may include a public or private school. Other potential providers include public or private institutions of higher education and faith-based organizations.

*LEAs, public schools, and charter schools* are not automatically considered approved providers. Rather, they can be providers if they meet the SEA’s established criteria and must go through the same

approval process as all other potential providers. Furthermore, these entities must offer their services outside the regular school day.

Regardless of the identity of a provider, the instruction and content must be secular, neutral, and non-ideological. *[Section 1116(e)(5)(D) and Section 1116(e)(9)]*

**C-5. Are faith-based organizations, including entities such as religious private schools, eligible to be supplemental educational service providers?**

Yes. Faith-based organizations (FBOs) are eligible to become providers of supplemental educational services if they meet the applicable statutory and regulatory requirements. Though providers should not discriminate against beneficiaries on the basis of religion, FBOs are not required to give up their religious character or identification to be providers. In matters of program eligibility, an SEA may not discriminate against potential supplemental services providers with regard to religion. Thus, faith-based and community based organizations are encouraged to become providers of supplemental educational services on the same basis as other eligible entities.

Neither Title I nor other Federal funds shall be expended to support religious practices, such as religious instruction, worship, or prayer. FBOs may offer such practices, but not as part of the supplemental educational services, and FBOs should comply with generally applicable cost accounting requirements to ensure that Federal funds are not used to support these activities. For example, FBOs may wish to keep Federal funds in a separate account to ensure that they are not used inappropriately. OMB Circulars A-21 (for educational institutions) and A-122 (for non-profit organizations) provide guidance regarding appropriate accounting practices.

**C-6. May providers using technology to deliver supplemental educational services be approved as eligible providers?**

Yes. The statute permits providers, including those that are not based within the LEA, to use alternate methods for delivery of services, which may include online, Internet-based approaches as well as other distance-learning technologies. Rural districts or districts with limited availability of service providers are especially encouraged to work with providers using these technologies.

**C-7. May an LEA identified as in need of improvement be a supplemental educational service provider?**

No. If an LEA is in need of improvement, the LEA may not be a supplemental educational service provider. However, schools within this identified LEA that are making adequate yearly progress may apply to be an approved provider.

**C-8. May a public school identified as in need of improvement be a supplemental educational service provider?**

No. If a public school is identified as in need of improvement, corrective action, or restructuring, the school may not be an approved supplemental educational services provider. *[NOTE: This provision is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

**C-9. May an individual or group of individuals be a supplemental educational service provider?**

Yes, an individual or group of individuals may be a supplemental educational service provider if they organize as a non-profit or for-profit entity (as described in C-4) and they meet the applicable statutory and regulatory requirements.

**C-10. Who is responsible for determining whether providers have a ‘demonstrated record of effectiveness?’**

States must determine what constitutes suitable evidence of a demonstrated record of effectiveness for the purposes of approving providers for the State list. The statutory emphasis on the state’s responsibility to promote participation by the maximum number of providers to give parents as many choices as possible suggests that States take a flexible approach in determining effectiveness.

**C-11. By definition, supplemental educational services must be of ‘high quality and research based.’ How may States make such determinations?**

A major focus of the *No Child Left Behind Act* is to use only those educational practices that have evidence to suggest that they will increase student academic achievement. This means the **most important consideration** in assessing the educational practices of a potential provider should be whether those practices result in improved academic achievement in reading/language arts and mathematics. Whenever possible, a provider should submit as part of the State

approval process any academic research supporting the particular instructional methods used by the provider.

In addition, the State may want to consider the following questions when identifying supplemental educational service providers:

1. How consistent are the services with the State's academic content and achievement standards, as they are required to be by the statute?
2. Is the progress of students receiving these services constantly monitored?
3. Is the instruction focused, intensive, and targeted to student needs?
4. Do students receive constant and systematic feedback on what they are learning?
5. Are instructors adequately trained to deliver the supplemental educational services?
6. Are students and parents participating in the program satisfied with the instructional program?

**C-12. What does it mean to provide instruction consistent with the LEA's instructional program and aligned with State student academic achievement standards?**

States are responsible for determining whether a provider can deliver supplemental instruction that is aligned with State student academic achievement standards. This does not mean that the instructional content and methods of a potential provider must be identical to those of the LEA, but they must share a focus on the same State academic content and achievement standards and be designed to help students meet those standards.

**C-13. How can a provider demonstrate that it is "financially sound?"**

States are responsible for developing criteria to determine when any provider is "financially sound" for the purposes of this program. States could require potential supplemental educational service providers to submit evidence of their financial soundness. States could also employ site audits to verify the accuracy of the information submitted. States could determine whether there are any complaints against the potential provider on file with the Better Business Bureau or similar local organizations.

**C-14. Are supplemental educational service providers governed by the teacher quality requirements of Section 1119?**

No.

## **D. REQUIREMENTS FOR MAINTAINING THE LIST OF PROVIDERS**

### **D-1. How may States meet the requirement to maintain and update their list of providers?**

The SEA must maintain a list of all approved providers in the State. This information must explain which providers may deliver supplemental educational services in each local educational agency. The list should also identify those providers whose services are accessible through technology. The list must include a brief description of the services, qualifications, and demonstrated effectiveness of each provider. States must update this list at least once a year.

At a minimum, potential service providers must be notified on an annual basis of the opportunity to provide supplemental educational services, and of the procedures by which potential providers may apply to be considered for inclusion on the approved list.

### **D-2. What are the obligations of States and LEAs for providing options for parents of students with disabilities or students covered under Section 504?**

The State and each LEA that arranges for supplemental educational services must ensure that eligible students with disabilities and students covered under Section 504 may participate. Furthermore, the supplemental educational services program within each LEA and within the State may not, as a whole, discriminate against these students. The State and each LEA are responsible for ensuring that eligible students with disabilities and students covered under Section 504 receive appropriate supplemental educational services and accommodations in the provision of those services. However, as indicated in C-2, individual private providers may exclude these students if more than minor adjustments would be required to serve them.

## **E. MONITORING REQUIREMENTS**

### **E-1. How does the State ensure that providers deliver high-quality and effective services?**

States have a responsibility to ensure that high quality services are delivered. In general, SEAs must identify the approved providers and determine whether providers improve student academic achievement. In implementing this principle, the State role can be tailored to the State's needs.



Specifically, the State must develop and implement standards and techniques for monitoring the quality, performance, and effectiveness of the services offered by approved supplemental educational services providers. Such standards and techniques, as well as any findings resulting from such monitoring, must be publicly reported. These quality control standards and techniques should be consistent with the initial criteria developed for identifying potential providers [Section 1116(e)(4)(D)]. States may also want to collect and report information about parent or student satisfaction with services.

States must also develop and implement standards for withdrawing supplemental educational service providers from the State-approved list. At a minimum, the statute requires States to remove from the approved list any provider that fails, for two consecutive years, to contribute to increased student proficiency relative to State academic content and achievement standards [Section 1116(e)(4)(D)]. In addition, a provider must be removed from the list if it fails to provide supplemental educational services consistent with applicable civil rights requirements.

**E-2. How should States make the determination of continued effectiveness by the provider?**

The goal is to ensure that students are offered services that help them achieve at higher levels in reading/language arts or mathematics. In making this judgment, each State can develop its own system for gathering information about effectiveness on an annual or periodic basis. The State may want to request assistance from its LEAs or may want to handle this monitoring at the State level.

### **III. LOCAL EDUCATIONAL AGENCY (LEA) RESPONSIBILITIES**

#### **F. OVERVIEW OF LEA RESPONSIBILITIES**

**F-1. What is the responsibility of the LEA in providing supplemental educational services?**

LEA responsibilities focus on notifying parents about the availability of supplemental educational services, arranging for the services to be provided, and monitoring the services for the purpose of improving academic achievement. Specifically, an LEA must:

1. Notify parents about the availability of services, at least annually. This information should be easily understandable; in a uniform format; including alternate formats, upon request; and, to the

extent practicable, in a language the parents can understand (See F-2 for additional information) [Section 1116(e)(2)(A)].

2. Help parents choose a provider, if requested (see G-2 for additional information) [Section 1116(e)(2)(B)].
3. Determine which students should receive services if not all students can be served (see A-5 for additional information) [Section 1116(e)(2)(C)].
4. Enter into an agreement with a provider selected by parents of an eligible student (see G-2 for additional information).
5. Assist the SEA in identifying potential providers within the LEA (See C-1 for additional information).
6. Provide the information the SEA needs to monitor the quality and effectiveness of the services offered by providers (See E-1 for additional information).
7. Protect the privacy of students who receive supplemental educational services (see F-2 for additional information) [Section 1116(e)(2)(D)].

## **F-2. What must the notice to parents contain?**

In general, an LEA should work to ensure that parents have comprehensive, easy-to-understand information about supplemental educational services [Section 1116(e)(2)]. At least annually, an LEA must provide notice to the parents of each eligible student regarding the availability of supplemental educational services. This notice must --

- Identify each approved service provider within the LEA, close by, or accessible through technology.
- Describe the services, qualifications and evidence of effectiveness for each provider.
- Describe the procedures and timelines that parents must follow to select a provider to serve their students (see F-3).

LEAs may provide additional information, as appropriate. LEAs may want to consider multiple avenues for providing *general* information about supplemental educational services, including newspapers, Internet, or notices mailed or sent to the home. Specific information about services should be provided directly to the parents of eligible students so that there is sufficient time to allow them to select providers. In

providing this information, the LEA must take care that it does not disclose, to the public, the identity of any student eligible for supplemental educational services without the written permission of the student's parents.

**F-3. May an LEA set a deadline by which parents must request supplemental educational services?**

Yes, the LEA may establish a reasonable deadline by which parents must request services. In establishing this timeframe, the LEA must ensure that the parents have sufficient time and information to make an informed decision about requesting supplemental educational services and selecting a provider. LEAs may allow a rolling enrollment for services, as long as eligible students are served and priorities are respected as necessary. LEAs may also allow enrollment of students who are newly enrolled in the school. The LEA should work together with parents to ensure that parents have ample information, time, and opportunity to take advantage of supplemental educational services.

**F-4. What if State law prohibits an SEA from identifying and providing a list of supplemental service providers?**

If State law prohibits an SEA from identifying supplemental service providers, then each LEA must carry out the SEA's responsibilities (see B-1) as well as its own responsibilities (See F-1).

## **G. PROVIDING SUPPLEMENTAL EDUCATIONAL SERVICES**

**G-1. If an LEA is an approved provider, what is its responsibility with respect to an agreement?**

An LEA that is a provider must prepare an agreement that contains the information listed in G-2. Although the LEA is not formally entering into an agreement with itself as the provider, the information is necessary so that parents of a student receiving services from the LEA know, for example, the achievement goals for the student, how progress will be measured, and the timetable for improving the student's achievement. If an LEA fails to meet the student's progress goals, the parent should be able to request services from another provider, if one is available, or should contact the SEA. The SEA may need to monitor more carefully the LEA's provision of supplemental educational services or, if warranted, rescind the LEA's approval to be a provider.

**G-2. Once a parent selects a provider, how are the services delivered?**

Once parents select a provider for their child, the provider must enter into an agreement with the LEA that includes the following:

1. Specific achievement goals for the student, which must be developed in consultation with the student's parents *[Section 1116(e)(3)(A)]*;
2. A description of how the student's progress will be measured and how the student's parents and teachers will be regularly informed of that progress *[Section 1116(e)(3)(B)]*;
3. A timetable for improving the student's achievement that, in the case of a student with disabilities, must be consistent with the student's individualized education program under section 614(d) of the Individuals with Disabilities Education Act and in the case of a student covered under Section 504, must be consistent with the provision of an appropriate education under Section 504;
4. A provision for termination of the agreement if the provider fails to meet student progress goals *[Section 1116(e)(3)(C)]*;
5. Provisions governing payment for the services by the LEA *[Section 1116(e)(3)(D)]*;
6. A provision prohibiting the provider from disclosing to the public the identity of any student eligible for or receiving supplemental educational services without the written permission of the student's parents *[Section 1116(e)(3)(E)]*; and
7. An assurance that supplemental educational services will be provided consistent with applicable civil rights laws.

The district is encouraged to use cost-effective methods in designing this agreement and fulfilling this obligation. For instance, the district may want to design a generic agreement that can be tailored to a particular student and provider. Also, the district would not need to create new assessments to measure student progress.

**G-3. May parents select any provider that appears on the State-approved list?**

Yes, parents may select any provider from the State-approved list, as long as that provider is in the area served by the LEA or within a reasonable distance of that area. Their selection may also include any approved provider that uses e-learning, online, or distance learning technology to provide supplemental educational services.

If parents ask for assistance from the district in selecting a supplemental educational service provider, the LEA is encouraged to consider student needs and unique provider services when offering a recommendation. Parents are not required to accept the LEA's recommendation for a supplemental educational service provider.

**G-4. If a provider is selected by parents, how long must it provide supplemental educational services?**

The provider must continue to provide supplemental educational services to eligible students who are receiving such services until the end of the school year in which such services were first received [Section 1116(e)(8)]. However, the sufficiency of funds and the intensity of services selected (i.e. the number of sessions per week) may limit the availability of services to a shorter period of time.

**G-5. What actions must an LEA take if the demand for supplemental educational services is greater than the supply?**

An approved provider may not have enough spaces to serve all the students who select that provider. In anticipation of such a situation, the LEA should establish fair and equitable procedures for selecting students to receive services [Section 1116(e)(2)(C)]. Furthermore, the LEA is encouraged to consider allocating such spaces consistent with the priority to serve the lowest-achieving eligible children.

**G-6. What can an LEA do if sufficient funds are not available to provide services to all eligible students?**

If sufficient funds are not available to serve all eligible children, an LEA must give priority to the lowest-achieving eligible students [Section 1116(b)(10)(C)]. (See A-5 for additional information). In this regard, the LEA has some discretion, although these choices are difficult because they inevitably result in some students being selected before other students who may also have significant needs. If an LEA anticipates that it will not have sufficient funds to serve all students eligible to receive supplemental educational services, it is encouraged to notify parents that priorities will be set in order to determine which of the eligible students may receive these services. Based on a review of all the information available about the performance of eligible students, the LEA and school staff should use their best professional judgment in making these choices. One possible approach might be for an LEA to select a cut-off score on an assessment measure either on a school-by-school basis or across all identified schools in the LEA. The LEA may also decide to concentrate services on the lowest-achieving students in particular grades or on those students in the subgroups that caused the school to be identified. Whatever measure the LEA selects, it should apply it fairly and equitably. To augment the amount of funds available to provide supplemental educational services, each SEA may use funds that the agency reserves under Title I, Part A and Title V, Part A to increase the funds available for LEAs to provide supplemental

educational services for all eligible students requesting such services  
*[Section 1116(e)(7)].*

**G-7. What happens if an LEA cannot access any approved provider of supplemental educational services?**

An LEA may request an exemption from the SEA of all or part of the supplemental educational service requirement. An exemption can only be granted if two conditions are met: (1) the SEA determines that none of the approved providers can make their services available in the LEA, within a reasonable distance of the LEA, or via distance learning; and (2) the LEA provides evidence that it cannot provide these services.

The SEA must notify the LEA of approval or disapproval of its exemption request within 30 days of receiving the request. Where services seem limited, an SEA should seek to include providers who deliver services using e-learning, online, or distance learning technologies. Prior to approving an exemption, the SEA should require the LEA to explain why it is unable to use distance learning technologies to make supplemental educational services available to eligible students.

**G-8. How long is an LEA exemption in effect?**

States are required to at least annually update the list of approved supplemental educational service providers (see D-1). Because of this provision, an exemption may not extend beyond the next timeframe for updating the list. With each updated list of providers, the LEA must request an exemption from the supplemental educational services requirement. *[NOTE: This provision is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

**H. THE ROLE OF PARENTS**

**H-1. How do parents select a supplemental educational service provider?**

Parents of eligible students choose a provider from the State-approved list. Parents may request assistance from their LEA in selecting a provider. In such cases, however, LEAs that also serve as providers must be careful to offer unbiased assistance focused on the specific academic needs of the student and the preferences of the parent. LEAs are not permitted to merely assign those students whose parents request assistance to a district or school administered program.

## **H-2. What is the role of parents in supplemental educational services?**

Parents are to be active participants in the supplemental educational services program:

At the *State level*, parents should be consulted in order to promote participation by a greater variety of providers and to develop criteria for identifying high-quality providers [Section 1116(e)(4)(A)].

At the *local level*, parents must be able to choose among all supplemental educational service providers identified by the State for the area served by the LEA or within a reasonable distance of that area. In addition, the LEA must assist parents in selecting a provider, if such help is requested [Section 1116(e)(2)(B)]. Parents should also have an option to change or terminate services, if they are not satisfied.

At the *provider level*, parents, the school district, and the provider chosen by parents must develop and identify specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement [Section 1116(e)(3)(A)]. In the case of a student with disabilities, or a student covered under Section 504, these decisions must be consistent with the student's individualized education program under section 614(d) of the IDEA or with the student's individualized education services under Section 504. All parents whose children receive supplemental educational services must be regularly informed of their student's progress [Section 1116(e)(3)(B)].

## **I. MONITORING SERVICES**

### **I-1. How often should parents and teachers receive information about student progress?**

As part of the agreement described in G-2, the LEA and provider, after consultation with the parents, must agree to a schedule of informing parents and the child's teacher(s) about student progress. The intent of this requirement is to ensure that students are improving their academic achievement and that instructional goals are being met.

### **I-2. If necessary, how are services terminated?**

LEAs need to be prepared to terminate agreements with the provider if the established goals and timetables are not met, or if the provider fails to comply with applicable health, safety, and civil rights laws [Section 1116(e)(3)(C)]. The process for terminating services should be written into the initial agreement between the LEA and provider. Parents may withdraw their child from services if they are not satisfied with the

program. In such instances, the LEA may allow the parent to select another provider that school year, if funds are available.

## **IV. FUNDING**

### **J. FUNDING ISSUES**

#### **J-1. How may an LEA pay for supplemental educational services?**

The new law authorizes LEAs to use Title I funds as well as other Federal, State, local, and private resources to pay for supplemental educational services required as part of the school improvement process.

An LEA may arrange for paying a provider for services in a number of ways. An LEA may pay the provider directly for such services. Alternatively, an LEA may issue certificates or coupons to parents of an eligible student for them to “purchase” services from an approved provider. For example, a certificate may entitle parents to obtain, from a provider of their choice from the States’ approved list, a certain number of hours of services or sessions for their student. As the student receives the services, the parent would redeem the certificate, which the provider would then submit to the LEA for payment. With any payment system, the LEA must still establish an agreement between the LEA and provider as described in G-2.

#### **J-2. How much must an LEA pay for supplemental educational services?**

The law establishes a joint funding mechanism for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend up to an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

- (1) Choice-related transportation;
- (2) Supplemental educational services; or
- (3) A combination of (1) and (2).

This flexible funding approach means that the amount of funding that an LEA must devote to supplemental educational services depends in part on how much it spends on choice-related transportation.

However, if the cost of satisfying all requests for supplemental educational services exceeds an amount equal to 5 percent of an



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LEA's Title I, Part A allocation, the LEA may not spend less than that percentage on those services.

An LEA may spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services. *[NOTE: This policy is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

**J-3. Must an LEA reserve a portion of its Title I allocation to pay for supplemental educational services?**

No. The statutory phrase “an amount equal to” means that the funds required to pay the costs of choice-related transportation and supplemental educational services need not come from Title I allocations, but may be provided from other Federal, State, local, and private sources.

An LEA can use other non-Title I sources of funding to meet the requirement to spend an amount equal to 20 percent of Title I funding, when such amounts are needed for choice-related transportation or supplemental educational services.

For example, if an LEA or State already operates a program of supplemental educational services, the LEA may be able to provide the services required by Title I through the existing program, counting the costs of that program toward the 20-percent requirement and avoiding the need to spend Title I dollars for supplemental educational services. In these instances, parents still have the choice to select any approved provider, including a privately operated program, as well as an LEA- or State-sponsored program.

If, to provide choice-related transportation and supplemental educational services to as many eligible students as possible, an LEA finds it necessary to reserve a portion of its Title I allocation, it should consider using for this purpose any funding already reserved by the LEA for district-wide activities.

**J-4. May an LEA use school improvement funds made available under Section 1003 (School Improvement) to pay for supplemental educational services?**

Yes. Supplemental educational services are an authorized activity under the school improvement provisions of Section 1003 of the ESEA.

**J-5. What other Federal program dollars may be used to pay for supplemental educational services?**

LEAs may use their Title V, Part A Local Innovative Education Program funds to pay for supplemental educational services. LEAs also may use funds transferred to Title I from other Federal education programs under Section 6123 to pay such costs. Programs eligible for such transfers include Title II, Part A Improving Teacher Quality State Grants; Title II, Part D Educational Technology State Grants; Title IV, Part A Safe and Drug-Free Schools and Communities State Grants; and Title V, Part A State Grants for Innovative Programs.

SEAs also may use their administrative funds reserved under Part A of Title I and Part A of Title V to assist LEAs in paying the costs of supplemental educational services, and may transfer additional funding for this purpose from other Federal education programs under Section 6123.

**J-6. May LEAs use additional funding made available through the transferability provisions authorized under Section 6123 to pay for supplemental educational services?**

Yes. Funds transferred to an LEA's Title I allocation under Section 6123 may be used for supplemental services.

An LEA must include such transferred funds in the base used in calculating the "amount equal to 20 percent" of its Title I allocation to determine required expenditures for choice-related transportation and supplemental educational services.

Alternatively, an LEA may transfer funds to Title V, Part A or Section 1003, if the LEA receives Section 1003 funds, to increase the amount of flexible funds available for supplemental educational services or other school improvement activities. Funds transferred to Title V, Part A or Section 1003 would not be included in the base used to calculate "an amount equal to 20 percent" of its Title I allocation.

**J-7. How should an LEA reserve Title I funds to help pay the costs of choice-related transportation and supplemental educational services?**

An LEA that is required to provide or pay for choice-related transportation and supplemental educational services may (1) reserve any Title I funds needed for this purpose "off the top" prior to making allocations to schools, or (2) adjust allocations to schools to make available the required funds.

If an LEA chooses the second method—adjusting allocations to schools—it may reserve funds from all Title I schools or from only schools identified for improvement, corrective action, or restructuring (subject to the limitation described under J-8).

**J-8. In reserving Title I funds for choice-related transportation and supplemental educational services, LEAs are not permitted to reduce Title I allocations to schools identified for corrective action or restructuring by more than 15 percent. How should LEAs calculate this 15 percent limit?**

LEAs may satisfy this requirement through one of two methods. First, an LEA may simply set a floor of 85 percent of its prior-year allocation to any school identified for corrective action or restructuring. Under this approach, an LEA reserving Title I funds for choice-related transportation and supplemental educational services would not be permitted to reduce its allocation to an affected school below this 85-percent floor.

Second, in making allocations to schools for a given year, an LEA would calculate two allocations. For the first allocation, the LEA would determine a “pre-reservation” allocation to schools before setting aside funds for choice-related transportation and supplemental educational services (but after any other reservations, such as those made for administrative costs and district-wide activities like professional development and parental involvement). Then, for schools identified for corrective action or restructuring, the LEA would calculate what 85 percent of their “pre-reservation” allocation would be. The LEA would determine a second allocation for all schools after reserving funds for choice related transportation and supplemental educational services. For schools in corrective action and restructuring, the LEA would then compare this allocation with 85 percent of their “pre-reservation” allocation and allocate the higher of the two to those schools.

**J-9. Are private school children receiving Title I services entitled to receive an equitable proportion of any Title I funds reserved by an LEA for supplemental educational services?**

No. Only children from low-income families attending public schools identified for improvement, corrective action, and restructuring—not all children participating in Title I—are eligible to receive supplemental educational services.

**J-10. Must an LEA pay for or provide transportation to service providers?**

No. An LEA may provide transportation to service providers, but is not required to do so under the law. In addition, the costs of such transportation may not be used to satisfy the 5-percent minimum expenditure requirement for supplemental educational services.

*[NOTE: This policy is included as a draft regulatory policy. Please see the Notice of Proposed Rulemaking dated August 6, 2002.]*

**J-11. May an LEA count administrative costs incurred in providing choice-related transportation or supplemental educational services toward the 20-percent requirement?**

No. Such costs, to the extent they are reasonable and necessary, are an allowable use of Title I funds, but only direct expenditures for choice-related transportation and supplemental educational services may be used to satisfy the 20-percent requirement.

**J-12. If an LEA does not incur any choice-related transportation costs, must it use the full 20-percent amount to pay for supplemental educational services?**

Yes, assuming there is sufficient demand for such services to require the expenditure of the full amount equal to 20-percent of its Title I allocation.

**J-13. How much must an LEA spend for each student receiving supplemental educational services?**

The statute limits the per-child cost for supplemental educational services to the lesser of an LEA's per-child allocation under Part A of Title I (determined as described in J-14) or the actual cost of the services. The per-child allocation of Title I funds to LEAs varies widely across the nation, ranging from roughly \$600 to \$1,500.

Note that this cap applies to the cost of instructional services only. LEAs may incur additional per-child costs related to the administration of supplemental educational services, transportation of students to a provider, or appropriate accommodations for students with disabilities.

**J-14. How must an LEA calculate the per-pupil funding cap on the cost of supplemental educational services?**

An LEA must calculate the per-pupil cap on supplemental educational services costs by dividing its Title I, Part A allocation by the number of children residing within the LEA aged 5-17 who are from families

below the poverty level, as determined by the most recent census estimates from the Department of Commerce. The Department of Education uses these poverty estimates to make allocations to LEAs, and provides the estimates to States as part of the allocation notification process.

**J-15. If revised cost estimates indicate that an LEA has reserved more Title I funds than are needed to pay for choice-related transportation and supplemental educational services, may the LEA reallocate those excess funds to schools or for other purposes?**

Yes, if the demand for choice-related transportation and supplemental educational services, or the costs of those activities, is lower than estimated at the time of the reservation, the LEA may reallocate any unused funds to other allowable activities. If such funds were made available by reducing allocations to specific schools, as described under J-7, then the LEA must reallocate the unused funds to those schools.

**J-16. How do the carryover rules described in Section 1127 affect any Title I funds reserved for choice-related transportation and supplemental educational services?**

The law allows LEAs to carry over no more than 15 percent of unused funds from one fiscal year to the next. This 15 percent cap applies to the LEA's entire Part A allocation, and therefore covers any funds reserved, but not spent due to lack of demand, for supplemental educational services. If the combination of unused funds reserved in Title I for supplemental educational services and other unspent Part A funds exceed 15 percent of the LEA's total allocation, the excess funds must be returned to the State for redistribution to other LEAs, unless the SEA grants the LEA a waiver. Funds carried over from one fiscal year to the next do not affect the base used for calculating the required reservation of funds for choice-related transportation and supplemental educational services.

Provided that the LEA has met all demand from parents and students for choice-related transportation and supplemental educational services, any unused portion of Title I funds reserved for this purpose may be reallocated to other purposes either during the year in which the reservation was made or, subject to the 15 percent limit, in the following year.

**Appendix A:**  
**Definitions**

**Eligible Child:** Eligible students are students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is thus determined by whether a student is from a low-income family and the improvement status of the school the student attends. [Section 1116(e)(12)(A)]

**Eligible School:** A Title I school that must provide supplemental educational services. This includes (1) a Title I school that does not make adequate yearly progress by the end of the first full school year after having been identified as a school in need of improvement [Section 1116(b)(5)]; (2) a Title I school that is in corrective action [Section 1116(b)(7)]; and (3) a Title I school identified for restructuring [Section 1116(b)(8)]

**Provider:** A provider of supplemental educational services may be a non-profit entity, a for-profit entity, or a local educational agency, and may include a public or private school. Other potential providers include public or private institutions of higher education and faith-based organizations. A provider (1) has a demonstrated record of effectiveness in increasing student academic achievement; (2) can document that its instructional strategies are of high quality, based upon research, and designed to increase student academic achievement; (3) is capable of providing educational supplemental educational services that are consistent with the instructional program of the local educational agency and State academic standards, and (4) is financially sound. [Section 1116(e)(12)(B)]

**Supplemental Educational Services:** Supplemental educational services are additional academic instruction designed to increase the academic achievement of students in low-performing schools. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C)].